IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/01/2004

CORAM

THE HON'BLE MR. JUSTICE P.SATHASIVAM
AND
THE HON'BLE MR. JUSTICE S.R.SINGHARAVELU

C.M.A.No.41 of 1996

The Management of M/s Mahalakshmi
Builders, 59, P.S.Sivasamy Salai
Mylapore, Madras.600 004. ... Petitioner
Respondent in WC
No.204/93

-Vs-

A.Govindaswamy ... Respondent
Applicant
in WC No.204/93

Appeal filed under Section 30 of the Workmen's Compensation Act, 1 923
against the order of the Commissioner for Workmen's Compensation-I, Madras-6
dated 25.4.1995 made in W.C. No. 204 of 1993.

!For appellant .. Mr. R.Arunagirinathan

^For respondent .. Mr.K.M. Ramesh
for M/s Fredrick Castro

:JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM,J.,)

The Management of M/s Mahalakshmi Builders, Mylapore, Madras.4,
aggrieved by the order of the Commissioner for Workmen's Compensation-I,
Madras.6 dated 25.4.1995 made in W.C.No.204/1994 has filed the above appeal,
mainly questioning the grant of penalty of 50% of the compensation due to the
applicant-respondent herein under Section 30 of the Workmen's Compensation
Act, 1923.

2. Heard both sides.

3. Even at the outset the learned counsel for the appellant/
Management fairly states that they are not questioning the quantum of

compensation (Rs.28,536/- arrived by the Tribunal). In other words, according to the appellant, the challenge in this appeal relates to the direction for payment of penalty to the extent of 50% of compensation. In the light of the limited issue, there is no need to refer to the factual matrix as discussed by the Commissioner of Workmen's Compensation. However, it is relevant to refer that after determining the compensation of Rs.28,536/-, the Commissioner has concluded that " though the respondent was aware of the accident and injury sustained by his worker (evidence of AW2) while on duty in accordance with the provisions of Section 4A of the Workmen's Compensation Act, instead of depositing the compensation due to the applicant, deliberately tried to suppress the facts. In the circumstances in consonance with the powers vested under Section 4A(3), I order the respondent to pay a sum of equal to 50% of the compensation due to the applicant as penalty".

4. According to the learned counsel for the appellant, though there is a provision for grant of penalty, before passing the order, directing the owner to pay penalty, certain conditions have to be complied with. In this regard he very much relies on Section 4 A (3)(a)(b) of Workmen's Compensation Act, 1923. In order to appreciate the said contention, it is relevant to refer to the said clause which reads as under:

4A. Compensation to be paid when due and penalty for default:

(1) Compensation under Section 4 shall be paid as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall:-

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion,there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding

fifty per cent of such amount by way of penalty.
PROVIDED that an order for the payment of penalty
shall not be passed under clause(b) without giving
a reasonable opportunity to the employer to
show cause why it not should be passed"

5. It is clear from the above provisions particularly sub-clause (3), in case if the employer is in default in paying the compensation within one month from the date it fell due, the Commissioner is empowered to direct the opposite party/employer in addition to the amount of arrears and interest thereon, pay a further sum not exceeding 50% of such amount by way of penalty. The proviso to the above subsection makes it clear that before passing an order directing the payment of penalty, the employer must be given a reasonable opportunity to show cause why it should not be passed. A reading of the above said provisions make it clear that before passing an order for payment of penalty, an opportunity must be given to the employer to put forth his defence/cause. Further, on receipt of objection it is incumbent on the part of the Commissioner to take a specific decision whether penalty is to be imposed considering the materials placed.

6. The learned counsel appearing for the appellant also very much relied on the decision of K.P.SIVASUBRAMANIAM,J., reported in THE MANAGEMENT OF DEVI PRESS, MADRAS VS S. SELVARAJ (2000(3) MLJ 344) wherein considering the above referred provisions and decisions of various High Courts as well as the Apex Court, arrived a conclusion that the Management is entitled to proper notice as against the imposition of penalty. In the light of the statutory provisions referred to above, we are in entire agreement with the view expressed by the learned Judge.
7. In our case, the Commissioner has failed to issue notice and provide an opportunity to the employer before directing it to pay the penalty . The Commissioner has failed to follow the procedures prescribed under the above mentioned provisions. On this ground, while confirming the quantum of compensation arrived and the interest awarded, we set aside the order of the Commissioner to the extent of imposing penalty and remit the matter to him for passing fresh order with regard to penalty after following the conditions as referred above. The Commissioner is directed to dispose of the same in the context of imposition of penalty within three months from the date of receipt of copy of this order. The respondent/applicant is entitled to withdraw the entire amount awarded towards compensation including the accrued interest. No costs.

Index: Yes
Internet: Yes

vbs

To
1. The Commissioner, Workmen's Compensation_I
Madras.6.

2. The Sub Assistant Registrar

VR Section, High Court, Madras.